

DISTRICT COURT, ELBERT COUNTY, COLORADO Court Address: 751 Ute Avenue, P.O. Box 232, Kiowa, CO, 80117	DATE FILED: February 1, 2017 2:14 PM CASE NUMBER: 2015CV30093 <p style="text-align: center;">⚠ COURT USE ONLY ⚠</p>
Plaintiff(s) STATE OF COLORADO et al. v. Defendant(s) SPENCER OLGUIN et al.	
Order: Stipulated Consent Judgment	

The motion/proposed order attached hereto: GRANTED.

Issue Date: 2/1/2017



MICHAEL JAMES SPEAR
 District Court Judge

<p>18th JUDICIAL DISTRICT COURT Elbert County, Colorado 751 Ute Avenue PO Box 232 Kiowa, CO 80117</p> <hr/> <p>STATE OF COLORADO, ex rel. CYNTHIA H. COFFMAN, ATTORNEY GENERAL,</p> <p>Plaintiffs,</p> <p>v.</p> <p>SPENCER OLGUIN and JOHN OLGUIN,</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Attorneys for Plaintiff: CYNTHIA H. COFFMAN Attorney General JAY B. SIMONSON, 24077* First Assistant Attorney General MARK T. BAILEY, *36861 Senior Assistant Attorney General BENJAMIN J. SAVER, *47475 Assistant Attorney General 1300 Broadway, 7th Floor Denver, CO 80203 (720)508-6209 (720)508-6040 Fax *Counsel of Record</p>	<p>Case No.: 2015cv30093 Div.: 1</p>
<p>STIPULATED FINAL CONSENT JUDGMENT</p>	

This matter is before the Court on the parties' Stipulation for Entry of a Final Consent Judgment. The Court has reviewed the Stipulation, the Complaint and is otherwise advised in the grounds therefore. The Court concludes that good cause has been shown for entering this Final Consent Judgment.

Accordingly, IT IS ORDERED that:

I. GENERAL PROVISIONS

1.1 Scope of Final Consent Judgment. The injunctive provisions of this Final Consent Judgment are entered pursuant to the Colorado Consumer Protection Act, §§ 6-1-101, *et seq.* C.R.S. (2016) ("CCPA"). This Final Consent Judgment shall apply to DEFENDANT SPENCER OLGUIN ("DEFENDANT"), and any person

under the direction or control of the DEFENDANT, including but not limited to any principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, and assigns who has received actual notice of this Court's Order.

1.2 Release of Claims. The State of Colorado, *ex rel.* Cynthia H. Coffman, Attorney General (hereinafter the "STATE"), acknowledges by its execution hereof that this Final Consent Judgment constitutes a complete settlement and release of all claims under the CCPA on behalf of the STATE against the DEFENDANT, his employees and former employees, with respect to all claims, causes of action, damages, fines, costs, and penalties which were asserted or could have been asserted under the CCPA in the Complaint, that arose prior to this date and relating to or based upon the acts or practices which are the subject of the Complaint filed in this action. The STATE agrees that it shall not proceed with or institute any civil action or proceeding under the CCPA against the DEFENDANT for any conduct or practice prior to the date of entry of this Final Consent Judgment which relates to the subject matter of the Complaint filed in this action.

1.3 Liability. Both parties are entering into this Final Consent Judgment for the purpose of compromising and resolving disputed claims and to avoid the expense of further litigation.

1.4 Preservation of Law Enforcement Action. Nothing herein precludes the STATE from conducting such investigations as are necessary to ensure compliance with the terms of this Final Consent Judgment, and DEFENDANT understands and agrees that the STATE may conduct such investigations. Nothing herein precludes the STATE from enforcing the provisions of this Final Consent Judgment, or from pursuing any law enforcement action under the CCPA with respect to the acts or practices of the DEFENDANT not covered by this lawsuit and Final Consent Judgment or any acts or practices of the DEFENDANT conducted after the entry of this Final Consent Judgment.

1.5 Compliance with and Application of State Law. Nothing herein relieves the DEFENDANT of his duty to comply with applicable laws of the State of Colorado nor constitutes authorization by the STATE for the DEFENDANT to engage in acts and practices prohibited by such laws. This Final Consent Judgment shall be governed by the laws of the State of Colorado.

1.6 Non-Approval of Conduct. Nothing herein constitutes approval by the STATE of the DEFENDANT'S past or future business practices. The DEFENDANT shall not make any representation contrary to this paragraph.

1.7 Preservation of Private Claims and Relation to Private Settlements. Unless otherwise noted, nothing herein shall be construed as a waiver of any private rights, causes of action, or remedies of any person against the DEFENDANT with respect to the acts and practices covered by this Final Consent Judgment.

1.8 Use of Settlement as Defense. The DEFENDANT acknowledges that it is the STATE's customary position that an agreement restraining certain conduct on the part of a defendant does not prevent the STATE from addressing later conduct that could have been prohibited, but was not, in the earlier agreement, unless the earlier agreement expressly limited the STATE's enforcement options in that manner. Therefore, nothing herein shall be interpreted to prevent the STATE from taking enforcement action to address conduct occurring after the entry of this Final Consent Judgment that the STATE believes to be in violation of the law. The fact that such conduct was not expressly prohibited by the terms of this Final Consent Judgment shall not be a defense to any such enforcement action.

1.9 Use of Settlement in Business Activity. Under no circumstances shall this Final Consent Judgment or the name of the Attorney General or any of the STATE's employees or representatives be used by the DEFENDANT or any person under their direction or control in any way that suggests an endorsement of DEFENDANT'S conduct, past, present, or future.

1.10 Retention of Jurisdiction. This Court shall retain jurisdiction over this matter for the purpose of enabling any party to this Final Consent Judgment to apply to the Court at any time for any further orders which may be necessary or appropriate for the construction, modification or execution of this Final Consent Judgment, and for the enforcement of compliance herewith and the punishment of violations hereof.

1.11 Contempt. The parties understand and agree that a finding of any violation of any term or provision of this Final Consent Judgment may give rise to all contempt remedies available to the Court, including those provided under C.R.S § 6-1-112(1)(b) and C.R.C.P. Rule 107.

1.12 Execution in Counterparts. This Final Consent Judgment may be executed in counterparts.

1.13 Severability. If any provision(s) of this Final Consent Judgment is held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

1.14 Successors in Interest. The terms and provisions of this Final Consent Judgment may be enforced by the current Colorado Attorney General, and by any of her duly authorized agents or representatives, as well as by any of his successors in interest, and by any of his successors in interest's agents or representatives.

1.15 Periods of Incarceration. In light of the pending criminal cases involving DEFENDANT, the parties understand and agree that any timeframes, including scheduled payments under Part III and the two-year period described in ¶¶ 4.1-4.3, below, shall be stayed during any period of time during which DEFENDANT is incarcerated. DEFENDANT shall timely notify the STATE at the beginning and end of any period of incarceration.

II. PERMANENT INJUNCTION

2.1 DEFENDANT, and any person under the direction or control of the DEFENDANT, including but not limited to any principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, contractors, and assigns who has received actual notice of this Court's Order, are hereby PERMANENTLY ENJOINED from:

- a) Soliciting, advertising, or providing in-home residential services of any kind to any Colorado consumer.
- b) Engaging in any deceptive trade practices as defined in the Colorado Consumer Protection Act, C.R.S. § 6-1-105(1), including any violation of C.R.S. § 6-1-301, *et seq.* or C.R.S. § 6-1-901, *et seq.* See C.R.S. § 6-1-105(1)(cc), (tt).
- c) Engaging in telemarketing.

III. MONETARY PROVISIONS

3.1 This Court orders DEFENDANT to pay a total amount of \$250,000. DEFENDANT shall make an initial payment of \$250 immediately upon entry of this Final Consent Judgment, followed by monthly payments of \$250 starting on the first Friday of the following month, and continuing for 1,000 months or until the \$250,000 is paid in full.

3.2 All payments are to be held, along with any interest thereon, in trust by the Attorney General to be used in the Attorney General's sole discretion for reimbursement of the State's actual costs and attorneys' fees, the payment of restitution, if any, and for future consumer fraud or antitrust enforcement, consumer education, or public welfare purposes.

3.3 All payments shall be made payable to the Colorado Department of Law with a reference to “*State v. Spencer Olguin, et al., 2015CV30093*, and shall be delivered to:

Chele Clark, Program Assistant
Consumer Fraud Unit
Colorado Department of Law
1300 Broadway
Denver, Colorado 80203

3.4 Failure to make the initial payment of \$250 will constitute contempt of this Court and result in the entire \$250,000 being due and payable immediately, without the need for trial. In the event DEFENDANT fails to make any subsequent monthly payment under ¶ 3.1, the STATE shall provide the DEFENDANT written notice of default and provide the DEFENDANT with 30 days to cure the default without penalty. If the DEFENDANT fails to cure the default within 30 days, the entire \$250,000 (minus any payments previously made by DEFENDANT) shall be due and payable immediately, without the need for trial.

3.5 In the event DEFENDANT fails to make any payment under ¶ 3.1 or violate any injunctive term of this Final Consent Judgment, DEFENDANT agree to waive and accept service of C.R.C.P. Rule 69(d) Interrogatories through his counsel, Anthony Viorst.

IV. POTENTIAL MODIFICATION OF CONSENT JUDGMENT

4.1 Two years after entry of this Final Consent Judgment, DEFENDANT may request that the STATE agree to modify this Final Consent Judgment.

4.2 If the following conditions are met, and if the STATE is satisfied, in its sole discretion, that DEFENDANT no longer presents a threat to Colorado consumers, the STATE agrees to consider a stipulation to modify this Final Consent Judgment as outlined in ¶ 4.3, below.

a. DEFENDANT is current on all monthly \$250 payments as set forth in Section III, above;

b. DEFENDANT has not violated any term of this FINAL CONSENT JUDGMENT;

c. DEFENDANT is current on all terms of probation, including completion of all scheduled UA's, showing clean results.

4.3 If the conditions set forth in ¶ 4.2 are met, the STATE will meet with DEFENDANT to discuss potential modification of this Final Consent Judgment to allow DEFENDANT to reopen his carpet-cleaning business. The parties agree that any such proposed modification would contain terms, decided by the STATE in its sole discretion, to govern the operation of DEFENDANTS' business and ensure Colorado consumers are protected.

4.4 If DEFENDANT timely makes the first \$25,000 in payments scheduled under Section III, above, the STATE agrees to suspend payment of the remaining \$225,000 pending compliance with all terms of this Final Consent Judgment, including any modified terms of this Final Consent Judgment.

V. REPRESENTATIONS AND WARRANTIES

5.1 Except as expressly provided in this Final Consent Judgment, nothing in this Final Consent Judgment shall be construed as relieving the DEFENDANT of his respective obligations to comply with all state and federal laws, regulations or rules, or granting permission to engage in any acts or practices prohibited by such law, regulation or rule.

5.2 The DEFENDANT acknowledges that he has thoroughly reviewed this Final Consent Judgment with his counsel, that he understands and agrees to its terms, and that he agrees that it shall be entered as an Order of this Court.

5.3 Each of the non-Court signatories to this Final Consent Judgment warrants and represents that he or she has authority to agree to this Consent Judgment on behalf of the specified parties.

VI. VIOLATIONS OF THIS CONSENT JUDGMENT

6.1 Any violation of any injunctive term of this Consent Judgment shall constitute contempt of this Court and result in the entire \$250,000 (minus any payments previously made by the DEFENDANT) being due and payable immediately, without the need for trial, and any further remedies that the Court deems appropriate.

6.2 In any action brought by the STATE to enforce this Final Consent Judgment, the DEFENDANT consents to personal and subject matter jurisdiction in the District Court for the City and County of Denver.

SO ORDERED and SIGNED this ____ day of _____, 2017.

BY THE COURT:

Michael James Spear
District Court Judge

Attachment to Order - 2015CV30093

This Consent Judgment concerning the DEFENDANT signed and agreed to this ____ day of _____, 2017.

Defendant Spencer Olguin

Approved as to form, on behalf of
Defendant Spencer Olguin,

ANTHONY VIORST, ESQ.
Viorst Law Offices, P.C.
950 S. Cherry
Denver, CO 80246

In all respects, on behalf of the Plaintiff
the State of Colorado, *ex rel.*
CYNTHIA H. COFFMAN, Attorney
General

MARK T. BAILEY*, Reg. No. 36861
Senior Assistant Attorney General
BENJAMIN J. SAVER*, Reg. No. 47475
Assistant Attorney General
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